

STATE OF VERMONT
HUMAN SERVICES BOARD

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| In re |) | Fair Hearing No. 21,164 |
| |) | |
| Appeal of |) | |

INTRODUCTION

Petitioner filed a Notice of Appeal and Motion for Stay Pending Appeal on or about May 5, 2008. Petitioner directed the Motion for Stay to the Human Services Board rather than the Vermont Supreme Court. The issue is whether the Human Services Board has jurisdiction to hear the Motion for Stay.

DISCUSSION

The petitioner pursued a fair hearing after the Department for Disabilities, Aging and Independent Living (DAIL) denied her eligibility for the Choices for Care program.¹ On or about March 25, 2008, the Human Services Board entered a decision reversing DAIL's denial of eligibility and remanding the case for a determination of appropriate services. On or about April 4, 2008, the Secretary of the Agency of Human Services exercised her authority under 3 V.S.A. § 3091(h) to reverse the Board's decision.

¹ The Choices for Care program is a Medicaid waiver program.

The petitioner is appealing the Secretary's decision. Pursuant to 3 V.S.A. § 3091(h), the Vermont Supreme Court, not the Human Services Board, has authority to grant a Stay pending appeal. The petitioner was so notified and was requested to withdraw the Motion for Stay. However, the petitioner decided to pursue the Motion for Stay before the Board.

The Legislature created the Human Service Board and set out the Board's jurisdiction and powers. In particular, the Legislature addressed what occurs in those cases where the Secretary has the authority to reverse the Board and the petitioner subsequently appeals the Secretary's reversal to the Vermont Supreme Court. The pertinent section at 3 V.S.A. § 3091(h) reads:

(h)(1) Notwithstanding subsections (d) and (f) of this section, the secretary shall review all board decisions and orders concerning ANFC, ANFC-EA, office of child support cases, and Medicaid. The secretary shall adopt a board decision or order, except that the secretary may reverse or modify a board decision or order if:

(i) the board's findings of fact lack any support in the record; or

(ii) the decision or order implicates the validity or applicability of any agency policy or rule.

(B) The secretary shall issue a written decision setting forth the legal, factual or policy basis for reversing or modifying a board decision or order.

(2) Notwithstanding subsections (d) and (f) of this section, a board decision and order concerning ANFC, ANFC-EA, office of child support, or Medicaid shall become the final and binding decision of the agency upon its approval by the secretary. The secretary shall

either approve, modify or reverse the board's decision and order within 15 days of the date of the board decision and order. If the secretary fails to issue a written decision within 15 days as required by this subdivision, the board's decision and order shall be deemed to have been approved by the secretary.

(3) Notwithstanding subsection (f) of this section, only the claimant may appeal a decision of the secretary to the supreme court. Such appeals shall be pursuant to Rule 13 of the Vermont Rules of Appellate Procedure. The supreme court may stay the secretary's decision upon the claimant's showing of a fair ground for litigation on the merits. The supreme court shall not stay the secretary's order insofar as it relates to a denial of retroactive benefits. (emphasis added).

The petitioner argues that the Board has jurisdiction to decide her motion. In the Vermont Rules of Appellate Procedure (V.R.A.P.), stays must usually be sought from the lower court pursuant to V.R.A.P. 8(a). In V.R.A.P. 13(b), administrative boards are considered lower courts. However, petitioner's argument ignores that the appeal is not sought from the Board decision but from the subsequent reversal by the Secretary. In essence, the Secretary is the lower court from whom an appeal is being sought. Our enabling statute specifically speaks to appeals from a Secretary's reversal by placing the power to grant a stay with the Vermont Supreme Court. In addition, petitioners have historically sought stays from the Vermont Supreme Court when they have appealed a Secretary's reversal.

ORDER

Based on the above analysis, petitioner's Motion for Stay Pending Appeal is dismissed for lack of jurisdiction.

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